

Hon. Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and
ANDREW WHEELER, Administrator,
United States Environmental Protection
Agency,

Defendants.

No. 2:19-cv-00884-RAJ

ANSWER

1 Defendants United States Environmental Protection Agency, et al. (collectively “EPA”)
2 respond to the numbered paragraphs of the Complaint of the State of Washington (“Plaintiff”) as
3 follows:

4 1. The assertions in Paragraph 1 are Plaintiff’s description of Plaintiff’s own claims
5 and thus no response is required. The assertions in Paragraph 1 also contain legal conclusions to
6 which no response is required.

7 2. The assertions in Paragraph 2 contain legal conclusions to which no response is
8 required.

9 3. The assertions in Paragraph 3 contain legal conclusions to which no response is
10 required. To the extent that a response is required, EPA admits that, on November 15, 2016, it
11 approved certain water quality standards submitted to EPA by the Washington Department of
12 Ecology and disapproved others, and that EPA has promulgated certain water quality standards
13 for application in Washington State. EPA’s promulgation is codified at 40 C.F.R. § 131.45 and
14 it became effective on December 28, 2016. EPA denies any factual allegations contrary to or
15 otherwise not contained in the same.

16 4. The assertions in Paragraph 4 seek to describe or characterize certain EPA
17 documents dated May 10, 2019, which documents are attached to Plaintiff’s Complaint as
18 Exhibit H, and which documents speak for themselves and are the best evidence of their
19 contents. To the extent a response is required, EPA denies such descriptions and
20 characterizations of the referenced documents to the extent that they are contrary to or otherwise
21 not contained in the plain language of those documents. The second sentence of Paragraph 4
22 also contains legal conclusions to which no response is required.

5. The assertions in the first three sentences of Paragraph 5 and in the first clause of the fourth sentence seek to describe, characterize, or quote the referenced May 7 and May 8, 2019 letters, which documents are attached to Plaintiff's Complaint as Exhibits F and G, and which documents speak for themselves and are the best evidence of their contents. To the extent a response is required, EPA denies such descriptions and characterizations of the referenced documents to the extent that they are contrary to or otherwise not contained in the plain language of those documents. To the extent Plaintiff seeks to describe or characterize other unidentified communications in the first three sentences of Paragraph 5 and the first clause of the fourth sentence, those assertions are unduly vague and thus on that basis EPA lacks knowledge and information sufficient to form a belief as to their truth. The remaining sentences in Paragraph 5 seek to describe or characterize EPA documents dated May 10, 2019, which documents are attached to Plaintiff's Complaint in Exhibit H, and which documents speak for themselves and are the best evidence of their contents. To the extent a response is required, EPA denies such descriptions and characterizations of the referenced documents to the extent that they are contrary to or otherwise not contained in the plain language of those documents. The assertions in the last sentence of Paragraph 5 are also legal conclusions to which no response is required.

6. The assertions in the first two sentences of Paragraph 6 are legal conclusions to which no response is required. The last sentence of Paragraph 6 characterizes the relief sought by Plaintiff and thus no response is required.

7. The assertions in Paragraph 7 are legal conclusions to which no response is required.

8. The first line of Paragraph 8 is a legal conclusion to which no response is required. EPA admits the remaining allegations in Paragraph 8.

1 9. The assertions in Paragraph 9 about the roles and authorities of Washington State
2 and its identified officers and agencies are legal conclusions to which no response is required.
3 As to the remaining assertions in Paragraph 9, EPA lacks knowledge and information sufficient
4 to form a belief as to the stated reasons Plaintiff brought this action.

5 10. EPA admits that it is an agency of the United States. The remainder of Paragraph
6 10 contains legal conclusions to which no response is required. The assertions in line 11 of
7 Paragraph 10 seek to characterize or describe the referenced May 10, 2019 documents, which
8 documents are attached to Plaintiff's Complaint in Exhibit H, and which documents speak for
9 themselves and are the best evidence of their contents. To the extent a further response is
10 required, EPA denies such descriptions and characterizations of the referenced documents in line
11 11 to the extent that they are contrary to or otherwise not contained in the plain language of those
12 documents.

13 11. EPA admits that Andrew Wheeler is the current Administrator and therefore chief
14 officer of the EPA. The remainder of the first sentence of Paragraph 11 contains legal
15 conclusions to which no response is required. EPA admits the averments in the second sentence.

16 12. The assertions in the first, second, and sixth sentences of Paragraph 12, and the
17 first two clauses of the fourth sentence, contain legal conclusions to which no response is
18 required. EPA lacks knowledge and information sufficient to form a belief as to the truth of the
19 factual averments in the third sentence, the fifth sentence, and the remainder of the fourth
20 sentence. The fifth sentence also contains legal conclusions to which no response is required.

21 13-18. Paragraphs 13 through 18 contain legal conclusions to which no response is
22 required.
23

1 19. The assertions in the first and second sentences of Paragraph 19 seek to describe
2 or characterize a rule published by EPA on December 22, 1992, 57 Fed. Reg. 60,848 (“Water
3 Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States’
4 Compliance”). This rule speaks for itself and is the best evidence of its contents. To the extent a
5 response is required, EPA denies such descriptions and characterizations of the referenced rule to
6 the extent that they are contrary to or otherwise not contained in the plain language of that rule.
7 In response to the third sentence, EPA admits that local survey data evaluated by EPA in 2015
8 indicated that some Washington residents eat more than 6.5 grams of fish per day. Any
9 additional factual allegations in the third sentence are unduly vague and ambiguous, and on that
10 basis EPA lacks knowledge and information sufficient to form a belief as to the truth of those
11 allegations. The assertions in the fourth sentence are unduly vague and ambiguous because they
12 fail to identify with adequate specificity who possessed the alleged “general recognition” and
13 when, what is referenced by “fish consuming populations,” and what particular toxic pollutants
14 the allegation is referencing, and on that basis EPA lacks knowledge and information sufficient
15 to form a belief as to the truth of the assertions.

16 20. In response to the first sentence of Paragraph 20, EPA admits that it has sent the
17 Washington Department of Ecology certain letters after December 2010. Those letters speak for
18 themselves and are the best evidence of their contents, and EPA denies any description or
19 characterization of those letters that are contrary to or otherwise not contained in the plain
20 language of such letters. To the extent a further response is required, the assertions in the first
21 sentence are unduly vague and ambiguous, failing to identify with adequate specificity the
22 particular letters referenced in that sentence, and on that basis EPA lacks knowledge and
23 information sufficient to form a belief as to the truth of the same. In response to the second

1 sentence, EPA lacks knowledge and information sufficient to form a belief as to when
2 Washington began work on the referenced rulemaking process. The third and fourth sentences
3 refer to certain unspecified complaints and a judicial decision, which documents speak for
4 themselves and are the best evidence of their contents. EPA denies any description or
5 characterization of those complaints and judicial decision that are contrary to or otherwise not
6 contained in the plain language of those documents. To the extent that a further response is
7 required, the fourth and fifth sentences are unduly vague, failing to identify with adequate
8 specificity the alleged lawsuit or the particular pleadings or judicial decision to which those
9 sentences refer, and on that basis, EPA lacks knowledge and information sufficient to form a
10 belief as to the truth of the same.

11 21. The first sentence of Paragraph 21 is unduly vague and thus on that basis EPA
12 lacks knowledge and information sufficient to form a belief as to the truth of the same. EPA
13 lacks knowledge and information sufficient to form a belief as to the truth of the allegations in
14 the second and third sentences.

15 22. Paragraph 22 seeks to describe or characterize an EPA document published at 80
16 Fed. Reg. 55,063 (Sep. 14, 2015). That document speaks for itself and is the best evidence of its
17 contents. To the extent a response is required, EPA denies such descriptions and
18 characterizations of the referenced document to the extent that they are contrary to or otherwise
19 not contained in the plain language of that document.

20 23. The first four sentences of Paragraph 23 seek to describe or characterize a
21 document published at 81 Fed. Reg. 85,417 (Nov. 28, 2016), which document speaks for itself
22 and is the best evidence of its contents. To the extent a response is required, EPA denies such
23 descriptions and characterizations of the referenced document to the extent that they are contrary

1 to or otherwise not contained in the plain language of that document. In response to the fifth
2 sentence, EPA admits that no party filed a lawsuit challenging the referenced human health
3 criteria. The remaining allegations in Sentence 5 are unduly vague and thus on that basis EPA
4 lacks knowledge and information sufficient to form a belief as to the truth of the same.

5 24. Paragraph 24 seeks to describe or characterize a document attached to Plaintiff's
6 complaint as Exhibit A, which document speaks for itself and is the best evidence of its contents.
7 To the extent a response is required, EPA denies such descriptions and characterizations of the
8 referenced document to the extent that they are contrary to or otherwise not contained in the
9 plain language of that document.

10 25. The assertion referring to "no action" in in the first sentence of Paragraph 25 is
11 unduly vague and thus on that basis EPA lacks knowledge and information sufficient to form a
12 belief as to the truth of the same. The remainder of Paragraph 25 seeks to describe or
13 characterize a document attached to Plaintiff's Complaint as Exhibit B, which document speaks
14 for itself and is the best evidence of its contents. To the extent a response is required, EPA
15 denies such descriptions and characterizations of the referenced document to the extent that they
16 are contrary to or otherwise not contained in the plain language of that document.

17 26. Paragraph 26 seeks to describe or characterize a document attached to Plaintiff's
18 complaint as Exhibit C, which document speaks for itself and is the best evidence of its contents.
19 To the extent a response is required, EPA denies such descriptions and characterizations of the
20 referenced document to the extent that they are contrary to or otherwise not contained in the
21 plain language of that document.

22 27. The allegations in the first sentence of Paragraph 27 are denied. The remaining
23 sentences in Paragraph 27 seek to describe or characterize a document attached to Plaintiff's

1 complaint as Exhibit D, which document speaks for itself and is the best evidence of its contents.
2 To the extent a response is required, EPA denies such descriptions and characterizations of the
3 referenced document to the extent that they are contrary to or otherwise not contained in the
4 plain language of that document.

5 28. The first and third sentences of Paragraph 28 seek to describe or characterize a
6 document attached to Plaintiff's Complaint as Exhibit E, which document speaks for itself and is
7 the best evidence of its contents. To the extent a response is required, EPA denies such
8 descriptions and characterizations of the referenced document to the extent that they are contrary
9 to or otherwise not contained in the plain language of that document. The second sentence seeks
10 to describe or characterize an EPA document included in the online public docket entitled
11 "Revision of Certain Federal Water Quality Criteria Application to Washington," docket
12 identification number EPA-HQ-OW-2015-0174-0441, available at regulations.gov. That
13 document speaks for itself and is the best evidence of its contents. To the extent a response is
14 required, EPA denies such descriptions and characterizations of the referenced document to the
15 extent that they are contrary to or otherwise not contained in the plain language of that
16 document.

17 29. EPA lacks knowledge and information sufficient to form a belief as to the truth of
18 the allegation in the first clause of the first sentence of Paragraph 29. The rest of Paragraph 29
19 seeks to describe or characterize documents attached to Plaintiff's Complaint as Exhibits F and
20 G, which documents speak for themselves and are the best evidence of their contents. To the
21 extent a response is required, EPA denies such descriptions and characterizations of the
22 referenced documents to the extent that they are contrary to or otherwise not contained in the
23 plain language of those documents.

1 30. The allegations in the first and second sentences of Paragraph 30 are denied. The
2 remainder of Paragraph 30 seeks to describe or characterize documents attached to Plaintiff's
3 complaint as Exhibit H, which documents speak for themselves and are the best evidence of their
4 contents. To the extent a response is required, EPA denies such descriptions and
5 characterizations of the referenced documents to the extent that they are contrary to or otherwise
6 not contained in the plain language of those documents.

7 31. The first two sentences of Paragraph 31 seek to describe or characterize a
8 document attached to Plaintiff's Complaint as Exhibit H, which document speaks for itself and is
9 the best evidence of its contents. To the extent a further response is required, EPA denies such
10 descriptions and characterizations of the referenced document to the extent that they are contrary
11 to or otherwise not contained in the plain language of that document. The third sentence
12 contains legal conclusions to which no response is required. EPA lacks knowledge and
13 information sufficient to form a belief as to the truth of the allegations in the fourth sentence.

14 32. EPA responds to Paragraph 32 by incorporating by reference its responses to
15 Paragraphs 1-31 above.

16 33. The first three sentences of Paragraph 33 contain legal conclusions to which no
17 response is required. The allegations in the fourth sentence are denied. The fifth sentence seeks
18 to describe or characterize a letter dated November 15, 2016, to Maia Bellon, Director of the
19 Department of Ecology, from Daniel Opalski, Director of the Office of Water and Watersheds,
20 EPA, that sets out the referenced EPA action, which document speaks for itself and is the best
21 evidence of its contents. To the extent a response is required, EPA denies such descriptions and
22 characterizations of the referenced document to the extent that they are contrary to or otherwise
23 not contained in the plain language of that document. The first clause of the sixth sentence is a

1 legal conclusion to which no response is required. The rest of the sixth sentence seeks to
 2 describe or characterize a Federal Register notice at 81 Fed. Reg. 85,417 (Nov. 28, 2016) that
 3 sets out the referenced EPA action, which document speaks for itself and is the best evidence of
 4 its contents. To the extent a response is required, EPA denies such descriptions and
 5 characterizations of the referenced document to the extent that they are contrary to or otherwise
 6 not contained in the plain language of that document. In response to the allegation in the seventh
 7 sentence that “The human health criteria adopted by EPA in December 2016 are part of
 8 Washington’s existing water quality standards,” EPA avers that the human health criteria
 9 promulgated by EPA in 81 Fed. Reg. 85,417 for waters in Washington State are the applicable
 10 water quality standards for Clean Water Act purposes for those waters in Washington State, and
 11 denies any further allegations in the allegation inconsistent with this averment. The rest of the
 12 seventh sentence contains legal conclusions to which no response is required. Portions of
 13 Sentence 8 that seek to describe or characterize the referenced May 10, 2019 document in
 14 Exhibit H to Plaintiff’s Complaint require no response because that document speaks for itself
 15 and is the best evidence of its contents. To the extent a response is required, EPA denies such
 16 descriptions and characterizations of the referenced document to the extent that they are contrary
 17 to or otherwise not contained in the plain language of that document. The rest of the eighth
 18 sentence contains legal conclusions to which no response is required. Plaintiff’s allegations of
 19 unspecified harm in the ninth sentence are unduly vague and on that basis EPA lacks knowledge
 20 and information sufficient to form a belief as to the truth of the same. The rest of the ninth
 21 sentence contains legal conclusions to which no response is required.

22 34. The first two sentence of Paragraph 34 contain legal conclusions to which no
 23 response is required. Portions of the third sentence that seek to describe or characterize the

1 referenced May 10, 2019 document in Exhibit H to Plaintiff's Complaint require no response
 2 because that document speaks for itself and is the best evidence of its contents. To the extent a
 3 response is required, EPA denies such descriptions and characterizations of the referenced
 4 document to the extent that they are contrary to or otherwise not contained in the plain language
 5 of that document. The rest of the third sentence contains legal conclusions to which no response
 6 is required. In response to the fourth sentence, EPA avers that certain human health criteria
 7 adopted by Washington and submitted to EPA are less stringent than certain human health
 8 criteria that EPA promulgated for waters in Washington State, and EPA denies any allegations in
 9 the fourth sentence inconsistent with this averment. The final clause of the fourth sentence
 10 contains legal conclusions to which no response is required. Plaintiff's allegations of unspecified
 11 harm in the fifth sentence are unduly vague and on that basis EPA lacks knowledge and
 12 information sufficient to form a belief as to the truth of the same. The allegations in the fifth
 13 sentence that seek to describe or characterize EPA actions in documents dated May 10, 2019,
 14 attached as Exhibit H to Plaintiff's Complaint, require no response because those documents
 15 speak for themselves and are the best evidence of their contents. To the extent a response is
 16 required, EPA denies such descriptions and characterizations of the referenced documents to the
 17 extent that they are contrary to or otherwise not contained in the plain language of those
 18 documents. The rest of the fifth sentence contains legal conclusions to which no response is
 19 required.

20 35. Paragraph 35 contains legal conclusions to which no response is required.

21 36. Paragraph 36 contains legal conclusions to which no response is required. To the
 22 extent Paragraph 36 contains factual allegations to which a response is required, they are denied.

23 A-D. Paragraphs A-D consist of Plaintiff's requested relief, and thus no response is

1 required.

2 **GENERAL DENIAL**

3 EPA denies any allegations of the Complaint, whether express or implied, that are not
4 specifically admitted, denied, or qualified herein.

5 **AFFIRMATIVE AND OTHER DEFENSES**

6 The Complaint fails to state a claim on which relief can be granted.

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8 Respectfully submitted this 12th day of August, 2019.

9
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2019, I filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which will cause a copy to be served upon counsel of record.

/s/ David J. Kaplan